APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/823,421	03/29/2001	Jay H. Connelly	42390P10861	9401

8791   7590   03/30/2007
BLAKELY SOKOLOFF TAYLOR & ZAFMAN
12400 WILSHIRE BOULEVARD
SEVENTH FLOOR
LOS ANGELES, CA 90025-1030

EXAMINER
STERRETT, JONATHAN G

ART UNIT	PAPER NUMBER
3623	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/30/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

PTOL-90A (Rev. 10/06)

	Application No.	Applicant(s)
Office Action Summary	09/823,421	CONNELLY, JAY H.
	Examiner	Art Unit	
	Jonathan G. Sterrett	3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12-29-06*.
2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-27* is/are pending in the application.
   4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) *1-27* is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
   a)☐ All b)☐ Some * c)☐ None of:
      1.☐ Certified copies of the priority documents have been received.
      2.☐ Certified copies of the priority documents have been received in Application No. _____.
      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08)
   Paper No(s)/Mail Date _____.
4)☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____.
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

Summary

1.   This **Final Office Action** is responsive to applicant's amendment filed 29

December 2006. Currently **Claims 1-27** are pending.

Response to Amendments

2.   The 112 2nd rejections of Claims 6-11 are withdrawn in light of the amendments

to the claims

Response to Arguments

3.   Applicant's arguments filed on 29 December 2007 have been fully considered but

they are not persuasive.

4.   The applicant argues that Ellis fails to teach the claim limitations because the

user knows what is tracked. The applicant further argues that the reception of the

feedback in Ellis "cannot be entirely transparent", because Ellis teaches a user setting

profile settings.

The examiner respectfully disagrees.

The claim limitations recite "receiving a feedback data from each of the plurality

of clients [i.e. at the server]...that is transparent to the user of the clients".

The examiner notes that the applicant does not set out a meaning in the

specification with "clarity, deliberateness and precision[1]" as to what the term

"transparent" means. The use of this term is only exemplary in the specification. The

---

[1] "The patentee's lexicography must, of course, appear 'with reasonable clarity, deliberateness, and precision' before it can affect the claim." *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1249, 48 USPQ2d 1117, 1121 (Fed. Cir. 1998) citing *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994).

examiner then turns to Webster's Collegiate Dictionary 10th Edition for a definition of

"transparent" as "easily detected".

The cited reference, Ellis, in column 19 line 10-20 describes a program guide

client that tracks what viewers watch. While the profiles created by a user do require

user intervention, the keeping track of programs (i.e. recording them) is feedback

provided by the program guide client that occurs without the user knowing it (i.e. thus it

is not easily detected by the user that their watching habits are being tracked). So in

this respect, this feedback is transparent to the user because the user is unaware (i.e.

does not easily detect) that what they watch is being tracked.

Even the feedback that occurs as a result of the user entering data (i.e. as in

their profile information) is received by the server in such a way that the user is unaware

of when and how the client transmits that information. The user is not explicitly aware of

how and when the server receives any direct feedback (i.e. from any profile information

they have entered).

Thus in the case where the feedback occurs when the user provides a profile

summary-- this information is received at the server in such a way that the user does

not know exactly when this information is received at the server (i.e. easily detected).

Only when the server subsequently process this information would the transparency of

the feedback be made obvious (i.e. because the profile details would show up in the

listings and viewing recommendations made by the server). The examiner notes that

the receiving of feedback data (i.e. at the server) is transparent for the entering of profile

data, not the entering of data by the user (in the case where the user specifies criteria).

The claim does not say that feedback entered by the user is transparent, only that the

feedback received from each of the clients (i.e. received at the server) is transparent to

the user. The only way a user in Ellis can detect that feedback (passive or active) is

received at the server occurs when detectable changes occur in programming

recommendations, and not when the server receives the feedback.

5.   The examiner notes that Official Notice was taken on page 6 with respect to

inferring demand. Since this Official Notice was not traversed, it is taken to be admitted

prior art.

Claim Rejections - 35 USC § 103

6.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

7.   **Claims 1-27** are rejected under 35 U.S.C. 103(a) as being unpatentable over

Ellis US 6,898,762 (hereinafter **Ellis**). (Ellis incorporates by reference Thomas US

2005/0149964, which is included in its entirety.)

        Regarding **Claim 1**, Ellis teaches:

        receiving a request to obtain consumer feedback on a broadcast product,

        column 19 line 37, the server requests from the client device feedback on what

was watched by the user.

wherein the broadcast product is designed to be broadcasted, substantially simultaneously, from a signal source to a service area via a broadcast medium, and captured by a plurality of clients located in the service area during the broadcasting

column 1 line 52, broadcast product is distributed via a variety of means, including broadcast television facilities (i.e. substantially simultaneously, since it is being broadcast as a television medium).

column 2 line 10-12, the broadcast product is captured by a plurality of clients (i.e. television viewers) who are in the service area for that distribution facility.

sending at least one product description data to the plurality of clients via the broadcast medium,

column 4 line 49-54, program guide data is transmitted (i.e transmitted by the main broadcast facility) to the interactive television program guide equipment (i.e. the plurality of clients).

wherein sending the product description data includes sending descriptions of features that characterizes the broadcast product;

column 4 line 53-57, product description data includes channels, titles, descriptions program identifiers, that characterize the programs (i.e. product) that is being broadcast.

receiving a feedback data on the broadcast product from each of the plurality of clients transparent to the user of the clients

column 19 line 13-15, the program guide client tracks what users are watching

(without the user knowing what is tracked) and provides this to the server on request

from the server – this transmission is transparent to the user watching television. Even

when a user may explicitly provide profile feedback – the reception of this profile by the

server is not readily detected by the user – the user does not see exactly when the

server receives this information – the user is only aware of their entering the data into

the client and not when it is received by the server.

wherein receiving the feedback data includes that each client generates at

least one rating indicating the user's interest level with respect to each of the

features.

Column 20 line 20-25, the program guide may define expressions (i.e. numerical

expressions that define a rating) and provide ratings for programs users have watched.

The numerical expressions calculate a rating based on the program guide features

characterizing the broadcast product – see column 20 line 35-40).

processing a consumer feedback summary based on the feedback

data on the broadcast product to infer demand for an upcoming broadcast

product that is scheduled for broadcasting over the broadcast medium.

Column 20 line 42-45. the program guide view makes a recommendation on a

product that is currently being broadcasted or scheduled to be broadcasted over the

broadcast medium (in this example, the recommendation is made to view the movie

"Armageddon" on another channel).

Ellis teaches inferring what a user will want to watch based on characterizing and rating what the customer has watched and based on their profile. Ellis does not teach inferring future demand for a yet to be scheduled broadcast product.

However, it is old and well known in the art to infer demand for future products based on what consumers like. Consumer preferences form an important input in designing new products so that the new products are likely to satisfy the consumer preference.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Ellis, regarding characterizing consumer demand to predict what available shows the consumer might want to watch, to include the step of inferring future demand for a yet to be scheduled product, because it would ensure that future shows met consumer preferences and improved consumer satisfaction.

Regarding **Claim 2**, Ellis teaches:

Wherein receiving the feedback data further includes that the clients generate at least one of the following:

relevance data to indicate a relevance level of each of the features to the user's interest in the broadcast product; and

column 20 line 24-27, the individual's profile is applied to the product features to determine a level of interest the user might have in the particular television program.

Ellis teaches using viewer history and the expressed profile of a user to determine what broadcast product the user is likely to prefer in the future.

Ellis does not teach using data to indicate an accuracy level of a first rating based on the user's viewing history.

However, the concept of using accuracy data to determine how accurate a prediction is based on actual data is a concept that is old and well known in the art of forecasting. This technique helps improve future predictions by providing an indication of how accurate past predictions were.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Ellis, regarding using a user viewing history and profile information to predict a user's future preferences, to include the step of receiving believability data to indicate and accuracy level of a consumer's rating of a product, because it would improve the accuracy of the future prediction.

Regarding **Claim 3**, Ellis teaches:

wherein the request to obtain consumer feedback is received from a product provider of the broadcast product.

column 19 line 37, the request to obtain the feedback comes from the program

guide server, which is a provider of the broadcast product (see Figure 2a, the program

guide server provides the broadcast product.

Regarding **Claim 4**, Ellis teaches:

wherein the request to obtain consumer feedback comprises a request to

test the success of one or more products.

Column 19 line 14-15, the feedback may track how long a viewer watched a

program, e.g. if they watched it longer than a certain period of time.

Regarding **Claim 5**, Ellis teaches:

wherein the consumer feedback summary comprises a product success

data for each of the one or more products.

Column 19 line 14-15, the tracking of how long a user watches a show measures

the success of that show. This is done for all shows a viewer watches (i.e. one or more

broadcast products).

Regarding **Claim 6**, Ellis teaches:

wherein the request to obtain consumer feedback comprises a request to

compare the success of two or more attributes of a product <u>against each other</u>

column 18 line 55-60, the server processes the logical expressions that determine how well different attributes of a broadcast product meet the expressed criteria for a user. – see also column 19 line 50-55, the program guide server compares programs that have been watched against programs that have not been watched – i.e. this compares the success of product attributes against each other in determining a recommended listing. Another comparison (i.e. a second attribute for comparison) is the use of Nielsen ratings – see column 19 line 60-65). Because the program guide server is making recommendations to the viewer, it is taking into account a plurality of aspects into account in making a recommendation.

Regarding **Claim 7**, Ellis teaches:

wherein the consumer feedback summary comprises an attribute success comparison data.

column 18 line 55-60, the server processes the data to determine which shows meet the criteria as set out by the logical expressions of the user. The listing of shows comprise success comparison data since they are shows that have passed the user's criteria.

Regarding **Claim 8**, Ellis teaches:

wherein the request to obtain consumer feedback comprises a request to compare the success of two or more products against each other.

Column 19 line 14-15, the feedback tracks how long a viewer watched different

program, i.e. by comparing the watching time with a certain duration. See also column

19 line 50-55, the program guide server compares programs that have been watched

against programs that have not been watched – i.e. this compares the success of

products against each other based on which one has been watched, and which one has

not been watched.

Regarding **Claim 9**, Ellis teaches:

wherein the consumer feedback summary comprises a product success

comparison data.

Column 19 line 14-15, the feedback tracks how long a viewer watched different

program, i.e. by comparing the watching time with a certain duration. The tracking data

compares the success of the products with exceeding a certain viewing time.

Regarding **Claim 10**, Ellis teaches:

wherein the request to obtain consumer feedback comprises a request to

compare the success of two or more ways of marketing a product against each

other.

Column 19 line 39-41, advertisement usage is tracked to determine which

advertisements have been selected and which have not been selected, i.e. the

advertisements are compared against each other. (see column 19 line 44 for reference

to 2005/0149964, incorporated by reference into Ellis). Para 47 and 49 in Thomas

discuss how advertisements are tracked to determine which advertisements (i.e. a

comparison) result in purchases by consumers –see para 55.

Regarding **Claim 11**, Ellis teaches:

wherein the consumer feedback summary comprises a marketing success

comparison data.

Thomas Para 62, the advertisement data includes comparison data to determine

the effectiveness of advertisements, e.g. based on the location of the advertisement in

the program guide.

Regarding **Claim 12**, Ellis teaches:

wherein the product description data comprises meta-data

column 15 line 25, program guide data (e.g. what kind of show it is, MPAA rating)

is meta data, because it is data about the program, i.e. data describing another set of

data.

Regarding **Claim 13**, Ellis teaches:

the product description data comprises program guide information

column 15 line 25, the product description data is program guide data (e.g. what

kind of show it is, MPAA rating) .

Claims 14-27 recite similar limitations as those recited in Claims 1-12 above,

and are therefore rejected under the same rationale.

Conclusion

8.   Applicant's amendment necessitated the new ground(s) of rejection presented in

this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37

CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the date of this final action.

9.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Jonathan G. Sterrett whose telephone number is (571)

272-6881. The examiner can normally be reached on Monday-Friday, 8:00AM -

6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for

the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

JGS
2007322

C. MICHELLE TARAE
PRIMARY EXAMINER